



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

August 21, 2015

PR 15-50

Mr. Donald B. MacDougall

Re: MacDougall v. Department of Health and Office of Drinking Water Quality

Dear Mr. MacDougall:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Department of Health and Office of Drinking Water Quality ("DOH" and "DWQ") is complete. By correspondence dated June 3, 2014, you alleged the DOH & DWQ violated the APRA when it failed to respond to your APRA request dated April 2, 2014. It appears your APRA request dated April 2, 2014 revised your APRA request dated March 31, 2014.

In response to your complaint, we received a substantive response in affidavit form from DOH and DWQ's legal counsel, Stephen Morris, Esquire. Attorney Morris states, in pertinent part:

"2. On or about March 31, 2014 the Office of Drinking Water Quality, Department of Health (DOH) received an email from [Mr.] Donald MacDougall requesting public records regarding the variance that DOH granted Quonochontaug Central Beach Fire District (QCBFD) to spray herbicide in West Pond within 400' of QCBFD's and East Beach's drinking water wells located in the well-head protection area for both communities. * * *

4. On or about April 1, 2014 I * * * sent the following email to Mr. MacDougall.

5. We are in receipt of your request for records under [APRA] * * * To provide you a timely and accurate response, I would like to clarify the public documents in possession of the Department of Health you seek to review.

* * *

7. On or about April 2, 2014 I received [a] revised request for public records from Mr. MacDougall.

* * *

8. On or about April 7, 2014 I requested DWQ to provide me any and all documents (electronic or paper) in DOH possession (in house or in storage) regarding Mr. MacDougall's revised APRA request * * * (emphasis in original).

9. On or about April 8, 2014 I received [a] response from DWQ regarding requests #1 and #2.

* * *

10. On or about April 9, 2014 I put the file aside with the * * * anticipated response to requests #3 and #4.

* * *

11. I take full responsibility for not managing the completion of Mr. MacDougall's request for public records (APRA). It was my intention to comply with the APRA, and more importantly, to provide Mr. MacDougall a timely response to his request. I acknowledge that not responding in a timely manner caused Mr. MacDougall to wonder when he would receive a response and ultimately to file a complaint with the Office of Attorney General * * *."

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the DOH and DWQ violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

Under the APRA, a public body has ten (10) business days to respond to a request for documents. See R.I. Gen. Laws § 38-2-7. If the public body denies the request, a written response detailing the specific reasons for the denial shall be sent within those ten (10) business days to the person or entity making the request. See R.I. Gen. Laws § 38-2-7(a). If no response is sent within ten (10) business days, the lack of response will be deemed a denial. See R.I. Gen. Laws § 38-2-7(b). If, for good cause, the public body cannot comply with a records request within ten (10) business days, the public body may extend the period an additional twenty (20) business days, for a total of thirty (30) business days. See id.; see also R.I. Gen. Laws § 38-2-3(e).

Here, there is no dispute that the DOH and DWQ did not timely respond in writing to your APRA request. This violated the APRA. See R.I. Gen. Laws § 38-2-7.

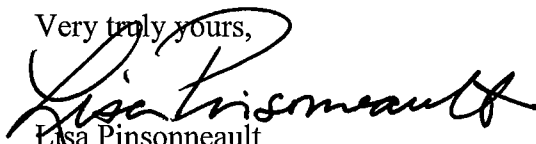
Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting “injunctive or declaratory relief.” See R.I. Gen. Laws § 38-2-8(b). A court “shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter***.” See R.I. Gen. Laws § 38-2-9(d). In terms of injunctive relief, the DOH and DWQ provided responses to your APRA request through this process. While you took issue with the fact that certain Certificates of Compliance were not signed by the chief administrator and that certain Certificates of Compliance for calendar year 2013 were missing, the DOH and DWQ subsequently provided the Certificates of Compliance for calendar year 2013. The fact that certain Certificates of Compliance were not signed by the chief administrator is irrelevant you were provided the Certificates of Compliance maintained, whether or not they were signed. Since you cite no other objections to the DOH and DWQ response, injunctive relief is not appropriate.

We do, however, have concerns whether the DOH and DWQ’s violation amount to a “knowing and willful” or “reckless” violation. See Boss v. Woonsocket Superintendent’s Office, PR 13-19; Scripps News v. Rhode Island Department of Business Regulations, PR 14-07. Thus, we shall allow the DOH and DWQ ten (10) business days from receipt of this letter to explain its lack of a response, and why we should not find this violation knowing and willful, or alternatively, reckless.¹

A copy of any and all responses by the DOH and DWQ should be presented to you. If you wish, you may also present evidence or arguments addressing this issue within the same timeframe, which must also be forwarded to legal counsel for the DOH and DWQ. Any arguments presented should be factually and/or legally based and not conclusionary. At the end of this time period, we will issue our supplemental finding on this matter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Lisa Pinsonneault

Special Assistant Attorney General

Cc: Stephen Morris, Esquire

¹ This Department provides guidance in recent findings for what type of violation may be considered reckless. See O’Rourke v. Bradford Fire District, PR 13-11; Catanzaro v. East Greenwich Police Department, PR 13-08.